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C O N F I D E N T I A L SECTION 01 OF 02 BEIJING 002428

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SUBJECT: PRC SUPREME COURT FACING CONSERVATIVE RETRENCHMENT

Classified By: Deputy Political Minister Counselor Ben Moeling.  
Reasons 1.4 (b/d).

¶1. (C) Summary. The Chinese Supreme People's Court (SPC) has begun a process of conservative retrenchment under current President Wang Shengjun that is turning back the reforms of his predecessor, Xiao Yang, according to legal scholars and SPC judges. Court officials and legal scholars have criticized Wang for his lack of legal education and for his ideological leanings that have reduced judicial independence and professionalism, rejected constitutional interpretation, and emphasized that Party interests are above the law. In addition, the SPC has backed away from its earlier efforts to seek insight and lessons from foreign judicial systems. Our contacts said that the corruption indictment against former SPC Vice-President Huang Songyou, while probably grounded in actual financial irregularities, also had political overtones and was designed to punish him for his support for judicial reform. End Summary.

#### SPC President Stifling Previous Reforms

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¶2. (C) Since taking office in March 2008, Chinese Supreme People's Court (SPC) President Wang Shengjun has promulgated a series of judicial policies based on the ideological slogan "the Three Supremes" ("sange zhishang" - the Party, the people's will, and the law) that are to guide judges in deciding cases. This focus on public opinion and deference to the Party in deciding cases departs from the reforms enacted by Wang's predecessor, SPC President Xiao Yang, which emphasized the role of judges as neutral arbiters, said Professor Cai Dingjian (protect), Director of the Constitutionalism Research Institute at China University of Political Science and Law.

¶3. (C) In conversations with PolOffs, legal scholars and court officials criticized Wang Shengjun's lack of a legal background and Party cadre credentials. Professor Cai told PolOffs on August 18 that by appointing Wang SPC president, President Hu Jintao had sent a "clear signal" that Hu did not approve of former SPC President Xiao Yang's approach to the law and did not agree with Xiao's judicial reforms.

¶4. (C) Professor Cai cited the recent reversal of the 2001 Qi Yuling case as signaling that the "direction of judicial reform had changed for political reasons." (Note: The Qi Yuling case is referred to as "China's Marbury v. Madison" because it asserted the right of the court to declare the Chinese Constitution as the basis for the rights of Chinese citizens. This was a challenge to the Party's supremacy, and the decision was withdrawn by SPC President Wang on December 18, 2008 as part of 27 interpretations invalidated by the SPC on that date. End Note.) Professor He Weifeng (protect), formerly of Beijing University, separately agreed with the view that Wang had reversed Xiao's reforms, telling PolOff on August 3 that Wang had thus far "shut the door" on the practice of using the constitution to guide decisions. SPC

Judge Du Weifu (protect) also criticized Wang's actions, complaining that "if the time is not right to say something, refrain from saying it; but one should not close the door so that it can never be said at a more appropriate time."

15. (C) On August 22, the Chinese state press announced that former SPC vice-president Huang Songyou had been turned over to judicial authorities for criminal prosecution on corruption charges. He had previously been the subject of an internal Party disciplinary (shuanggui) investigation that ended with his expulsion from the Communist Party. Huang was a prominent SPC vice-president under Xiao Yang and the driving force behind the original Qi Yuling interpretation. Professor Cai indicated that although Huang was probably corrupt, the investigation was driven by political considerations related to his aggressive support for judicial reform.

#### Role of SPC Leadership

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16. (C) Our contacts differed in their opinions about the impact of the SPC president on the pace of legal reform in China. Retired SPC Judge Zhou Daoluan (protect), now a professor at National Judicial College, told PolOff that although SPC presidents generally serve terms of nearly 10 years, the Supreme People's Court leadership does not have the same impact on Chinese constitutional law as Supreme Court justices do in the United States. SPC Judge Li Xiao (protect), argued that the SPC president exercises a great deal of influence in the court. Li was consequently more pessimistic than Judge Zhou about the current direction of

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the SPC. Professor Cai explained that, although the SPC president did not usually author opinions, his views on decisions held great sway over the rest of the court.

#### Criticism of the Three Supremes (Party, People's Will, Law)

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17. (C) Professor He Weifang told PolOffs that the Three Supremes policy directly contradicted former SPC President Xiao Yang's efforts to make judges more independent, professional, and flexible and to encourage them to base their decisions on the constitution. He said that, in theory, each of the "Supremes" is of equal importance, but in the Party's view, the law was primarily a means to safeguard the interests of the Party. Professor He also said he had been openly critical of SPC President Wang and had written articles questioning the Three Supremes doctrine. He noted that Wang was aware of his criticisms, adding that Wang seemed to have reacted by reemphasizing his policy of Party primacy over the constitution. Cai Dingjian separately expressed his "resolute opposition" to the Three Supremes theory, adding that it was a sensitive topic that few dared to write about. Cai maintained that the theory "violated" Deng Xiaoping's principles of strengthening rule of law to promote economic development, contravened Article 5 of the Chinese Constitution's declaration that the constitution was the "supreme law of the country," and was an effort to make the law serve the interests of the political establishment.

#### Division and Dissatisfaction within the SPC

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18. (C) SPC Judges Li Xiao and Du Weifu expressed their frustration with colleagues on the court who made decisions solely based on instructions from the SPC leadership. Li Xiao complained, in an obvious reference to SPC President Wang Shengjun, that "the leadership does not even have a law background," and jokingly referring to the "Three Supremes" as "brainwash." However, Li said, other SPC vice-presidents did not dare point out Wang's "inappropriate decisions and instructions." Cai Dingjian maintained that he and other

scholars felt other judges would have been "more appropriate" as SPC president. There was no collegial "first among equals" doctrine for the SPC President as there was for the Chief Justice of the U.S. Supreme Court, and half of the otherwise talented, professional judges had to "show obedience" to the president, complained Cai. He Weifeng also observed that many of the SPC vice-presidents complained about Wang, but "could not do anything."

#### Foreign Influence on the Court

19. (C) SPC Judge Hu Yunteng's assistant Ding Guangyu told PolOffs that occasionally foreign legal news, judicial developments, and significant cases were translated and distributed to members of the SPC. However, in a departure from previous practice whereby decisions rendered in a foreign court were taken into consideration by the SPC, the court had recently taken a more "closed-door" stance and focused more on self-learning than on learning from foreign systems. SPC Judge Li Xiao expressed her view that the court was "mistaken" in its "blind rejection" of Western influence. She suggested that, although some dimensions of foreign legal practice (such as the jury system) might not be easily adaptable to China now, areas of law that were similar in both countries, such as corporate law, would be worthy of emulating to save China time and energy. Li had studied in the United States and said her background had become an obstacle to her promotion because she was considered close to the United States and in favor of Western legal theory.

HUNTSMAN